IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.3163 OF 1998

1. Khetan Industries Private Ltd., a Company registered under the Companies Act, 1956, having its registered office at 198, Jamshedji Tata Road, Churchgate Reclamation, Mumbai 400 020.

2. Smt Bhagwatibai B. Khetan of Mumbai, Indian Inhabitant, residing at 98, Jamshedji Tata Road, Khetan Bhavan, 198, Jamshedji Tata Road, Churchgate Reclamation, Mumbai 400 020. ...Plaintiffs

Versus

1. Ashok Kumar Khetan of Bombay Indian Inhabitant, residing at Khetan Bhavan, 198, Jamshedji Tata Road, Churchgate Reclamation Mumbai 400 020.

2. M/s.Avgon Feigner International, C/o.Ashok Kumar Khetan, Khetan Bhavan, 198, Jamshedji Tata Road, Churchgate Reclamation, Mumbai 400 020. ...Defendants

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Ms Tamhane i/by Shri R.D.Suvarna for the Plaintiffs.

CORAM : ABHAY S.OKA, J.
DATED : AUGUST 01, 2007.

ORAL JUDGMENT:

1. The learned counsel appearing for the plaintiffs states that the second plaintiff has expired on 20th January, 2002 and therefore, her name may be permitted

to be deleted. Accordingly, permission is granted to delete the name of the second plaintiff.

2. The suit has been shown under the caption of "Undefended Suits for Exparte Decree". The learned counsel appearing for the plaintiffs has tendered on record an affidavit in lieu of examination-in-chief of Shri Rajkumar P.Khetan, a Director of the first plaintiffs. The said affidavit is taken on record and marked "X" for identification. Alongwith a list, five documents have been tendered by the plaintiffs. The said list alongwith the documents is taken on record and marked "Y" (collectively) for identification.

3. The first plaintiffs are a private limited company registered under the Companies Act, 1956. The second plaintiff was at the relevant time the chairperson of the first plaintiff. According to the case of the plaintiffs the first defendant was a director of the first plaintiffs. According to the plaintiffs, the second defendant is a benami firm of the first defendant to whom the first defendant has fraudulently and wrongfully paid monies of the first plaintiff. According to the case of the plaintiffs the first defendant was appointed as a director of the 1st Plaintiffs Company on 31st December, 1994 and he ceased

to be a director on and from 29th December, 1997.

4. According to the case of the plaintiffs on or about 23rd January, 1995, at the instance of the first defendant, the first plaintiffs paid to M/s.CIFCO Finance Limited a sum of Rs.25 lakhs by cheque No.369646 dated 23rd January, 1995 drawn on the Central Bank of India as a non-cumulative deposit carrying interest at the rate of 15% per annum for a period of one year. It is alleged that the 1st Defendant colluded, conspired or connived with the said CIFCO Finance Limited by instructing the said Company not to release the deposit amount of Rs.25,00,000/-.

5. The allegation in the plaint is that on 24th June, 1995 when the second plaintiff was at the residence of her daughter, the first defendant who is the son of the second plaintiff came there and forced the second plaintiff to sign twenty blank cheques bearing Nos.382458 to 382477 of the account of the first plaintiff with Central Bank of India, Fort Branch, Mumbai. According to the plaintiffs, the second plaintiff was forced to sign the said cheques as there was a threat given to her of throwing her down from the 18th floor if she refuses to sign the cheques. It is alleged that the first defendant wrongfully retained the

said cheques.

6. It is alleged that the first defendant drew some of the aforesaid blank cheques signed by the second plaintiff in favour of the third parties fraudulently and/or in collusion, conspiracy or connivance with the third parties and caused cheques amounting to Rs.25,69,268/- to be encashed. The second plaintiff filed a private complaint against the first defendant in the court of the learned Metropolitan Magistrate, 37th Court, Esplanade, Mumbai alleging commission of offence under section 386 read with section 323 of the Indian Penal Code.

7. The present suit relates to two cheques. It is alleged that cheque Nos.382467 dated 22nd August, 1995 as well as cheque No.382468 dated 02nd September, 1995 were drawn in favour of the second defendant in the amounts of Rs.01,51,000/- and Rs.25,000/- respectively and the said cheques have been encashed. The allegation in the plaint is that the first defendant drew the said cheques in favour and handed over the same to the second defendant by colluding, conspiring or conniving with the second defendant thereby causing wrongful loss to the plaintiffs. It is alleged that there was no transaction between the 1st plaintiffs and the second defendant and

there was no amount due and payable by the plaintiffs to the second defendant. It is, therefore, contended that the defendants are jointly and severally liable to repay the amounts under the said cheques to the Plaintiffs.

8. A notice was issued by the plaintiffs' advocate on 16th June, 1998 calling upon the defendants to pay the sum of Rs.01,51,000/- together with interest at the rate rate of 24% thereon. It is stated that due to oversight, the amount of Rs.25,000/- paid under the second cheque was not included in the said notice. The Defendants failed to pay any amount to the plaintiffs. Therefore, the plaintiffs have filed this suit for recovery of the cheque amounts of Rs.01,76,000/- with interest thereon at the rate of 24% per annum from the dates on which cheques were encashed till the date of institution of the suit and for further interest at the rate of 24% per annum.

9. There is no written statement filed by the defendants. The claim of the plaintiffs in the suit has been duly proved by the affidavit of Shri Rajkumar B. Khetan. Therefore, the case made out in the plaint regarding the first defendant forcibly obtaining signatures of the second plaintiff will have to be accepted. The extract of the bank account of the first

plaintiff shows that the two cheques which are subject matter of this suit have been encashed. Therefore, a case is made out for passing a decree for recovery of the amount payable under the said cheques. Further interest has been claimed at the rate of 24% per annum. In view of provisions of section 34 of the Code of Civil Procedure, 1908 further interest will have to be granted at the rate of 6% per annum.

10. Hence, the suit is decreed in terms of prayer clause (a) with a modification that the plaintiffs will be entitled to further interest on the sum of Rs.01,76,000/- at the rate of 6% per annum from the date of institution of the suit till realisation or payment. The plaintiffs will be entitled to refund of court fees, if any, as per the rules. Certified copy is expedited.

JUDGE